

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

K.C. HOPPS, LTD.,

Plaintiff,

v.

**THE CINCINNATI INSURANCE
COMPANY,**

Defendant.

Case No. 4:20-CV-437-SRB

**PLAINTIFF'S PROPOSED JURY INSTRUCTION AS TO
PARTIES' JOINT STIPULATIONS OF FACT**

INSTRUCTION NO. ____

The plaintiff and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have just stated. You must, therefore, treat those facts as having been proved.

The plaintiff and defendant have stipulated to the following facts:

1. Plaintiff owns in whole or in part, or is the managing member of, several entities that operate the following nine bars, restaurants, catering services, and event spaces in the Kansas City metropolitan area (“Plaintiff’s Establishments”):

- a. O’Dowd’s, LLC, a Missouri limited liability company, d/b/a O’Dowd’s Gastrobar, 4742 Pennsylvania Avenue, Kansas City, MO 64112;
- b. Briarcliff Events, LLC, a Missouri limited liability company, d/b/a The View at Briarcliff Event Space, 4000 N Mulberry Drive, Kansas City, MO 64116;
- c. Arena Promotions, LLC, a Missouri limited liability company providing food beverage and catering services at Hy-Vee Arena, 1800 Genessee Street, Kansas City, MO 64102;
- d. Southeast KC Restaurant Co., LLC, a Missouri limited liability company, d/b/a Blue Moose Bar & Grill, Red Bridge, 11134 Holmes Road, Kansas City, MO 64131;

- e. Blue Moose, LLC, a Kansas limited liability company, d/b/a Blue Moose Bar & Grill, Prairie Village, 4160 W 71st Street, Prairie Village, KS 66208;
- f. Barley's Brewhaus, LLC, a Kansas limited liability company, d/b/a Barley's Brewhaus, 16649 Midland Drive, Shawnee, KS 66217;
- g. Falcon Ridge Restaurant, LLC, a Kansas limited liability company, d/b/a Blue Moose Bar & Grill, Lenexa, 10064 Woodland Road, Lenexa, KS 66220;
- h. Hopps Catering, LLC, a Kansas limited liability company, d/b/a Relish Classic Catering and Moose Truck food truck, 9112 Cody Street, Overland Park, KS 66214; and
- i. Pan Fried 2, LLC, a Kansas limited liability company, d/b/a Stroud's Overland Park, 8301 W 135th Street, Overland Park, KS 66223.

2. Plaintiff does not own any of the buildings housing the above nine listed Plaintiff's Establishments.

3. Defendant issued to Plaintiff a commercial property insurance policy bearing Policy No. EPP 012 40 51 / EBA 012 40 51, for the coverage period from January 25, 2020, through January 25, 2023 (the "Policy").

4. Plaintiff is a Named Insured under the Policy, as are each of Plaintiff's Establishments listed above.

5. The premium required by the Policy has been paid and the Policy remains in force today.

6. The Policy defines "Loss" as "accidental physical loss or accidental physical damage."

7. The Policy defines "Business Income" as follows:

- a. Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses sustained, including payroll.

8. The Policy states that the amount of “Business Income” “loss” will be determined based on:

- a. The Net Income of the business before the direct ‘loss’ occurred;
- b. The likely Net Income of the business if no direct ‘loss’ had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- c. The operating expenses, including payroll expenses, necessary to resume ‘operations’ with the same quality of service that existed just before the direct ‘loss’; and
- d. Other relevant sources of information, including
 - i. The Plaintiff’s financial records and accounting procedures;
 - ii. Bills, invoices and other vouchers; and
 - iii. Deeds, liens or contracts.

9. The Policy states that “Period of restoration” means the period of time that:

- a. Begins at the time of direct “loss.”
- b. Ends on the earlier of:
 - (1) The date when the property at the “premises” should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location;or

(3) The number of consecutive months after the date of direct physical “loss” indicated in the Schedule of this endorsement, which is 12 months.

c. The expiration date of the policy will not cut short the “period of restoration.”

10. In the event of a loss, the Policy required the Plaintiff to take all reasonable steps to protect the Covered Property from further loss. It also required Plaintiff to resume all or part of its business activities as quickly as possible.

11. Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) is a novel zoonotic pathogen that is responsible for causing Coronavirus Disease 2019 (COVID-19).

12. On or about March 24, 2020, Plaintiff made a claim under the Policy for business income.

13. Defendant denied Plaintiff’s claim for coverage by letter dated May 15, 2020. Plaintiff filed this lawsuit on June 4, 2020

Source: Parties’ Joint Stipulations of Fact (Doc. 216)

Dated: October 27, 2021

STUEVE SIEGEL HANSON LLP

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